



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,124	02/26/2004	Karen McBride	H311057US	1862

28079 7590 08/29/2005

GOWLING, LAFLEUR HENDERSON LLP
ONE MAIN STREET WEST
HAMILTON, ON L8P 4Z5
CANADA

EXAMINER

GRILES, BETHANY L

ART UNIT	PAPER NUMBER
----------	--------------

3643

DATE MAILED: 08/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/786,124	Applicant(s) MCBRIDE, KAREN	
	Examiner Bethany L. Griles	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) 1-4 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election of Claims 5-8 in the reply filed on 7-8-05 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

The term "consisting of" is a closed ended term. Therefore, when applicant claims a third inner layer disposed over the second layer as claimed in claim 7, it is improper as the Applicant appears to be claiming an additional item as opposed to further limiting the existing item set forth in claim 5. Claim 7 is rejected, since it is improper to further add an additional item to the structure claimed in claim 5, as claim 5 specifically utilized the term "consisting of".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 5 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Begley et al. (GB2384967A).

Regarding claims 5 and 8, Begley discloses a belt consisting of a first layer of high friction slip resistant material (In this case, when the structure is assembled, the wires of the wheel serve as the first layer) disposed on an interior surface of an exercise wheel, the belt further having a second layer of abrasive material (the structure which wraps around the wheel to be secured there), which is also exposed to an interior cylindrical surface of the assembly.

Regarding claim 8, Begley et al. disclose a free coupling end (figure 2 denotes a “glue strip” on the end of the belt) adapted to be releasably secured to the belt to form a loop of selected diameter commensurate with an internal diameter of the exercise wheel.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

Art Unit: 3643

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Begley et al. in view of Brown US6332431.

Regarding claim 6, Begley et al. disclose a second layer.

Begley et al. do not disclose the layer consists of sandpaper.

Brown discloses a second layer of sandpaper (col 3, line 54).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Brown of the use of sandpaper to the invention of Begley et al. in order to trim the claws of an animal and additionally to add further traction to the surface of the wheel when in use.

Regarding claim 7, Begley et al. do not disclose a third layer disposed over the second layer.

Brown discloses a third layer 32 disposed over the second layer having a plurality of transversely extending rungs 34 which expose selected areas of the abrasive material therebetween.

Art Unit: 3643

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Brown of a third layer to the invention of Begley et al. in order to make the device safer for use for the animal.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Richards US5775263; Venson et al. USD484284 ; Carleson et al. US6848396.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bethany L. Griles whose telephone number is 571.272.6888. The examiner can normally be reached on Wednesday and Thursday, 5.30 am-2.00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571.272.6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

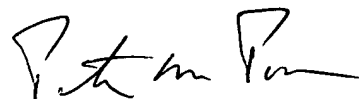
Application/Control Number: 10/786,124
Art Unit: 3643

Page 6



Bethany L. Griles
Examiner
Art Unit 3643

blg



Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600

8/25/05